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In re Application of LEWIN :
U.S. Application No.: 10/540,678 :
PCT Application No.: PCT/SE03/01887 :
Int. Filing Date: 04 December 2003 : DECISION
Priority Date Claimed: 23 December 2002 :
Attorney Docket No.: 1815 :
For: METHOD AT A GAS BURNER AND A :
COMBINED GAS BURNER AND COOLER :

This is in response to applicant's "Petition to Withdraw Holding of Abandonment" filed 17 August 2006, which is being treated under 37 CFR 1.10(e). No petition fee is due.

BACKGROUND

On 04 December 2003, applicant filed international application PCT/SE03/01887, which claimed priority of an earlier Sweden application filed 23 December 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 08 July 2004. The thirty-month period for paying the basic national fee in the United States expired on 23 June 2005.

On 23 June 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 19 December 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 18 February 2006, applicant purportedly filed an executed declaration.

On 07 August 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely respond to the Notification of Missing Requirements.

On 17 August 2006, applicant filed the present petition under 37 CFR 1.10(e).

DISCUSSION

37 CFR 1.10(e) states,

Any person mailing correspondence addressed as set out in 1.1(a) to the Office with sufficient postage utilizing the Express Mail Post Office to Addressee service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the Express Mail mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by Express Mail;

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the Express Mail mailing label thereon, a copy of any returned postcard receipt, a copy of the Express Mail mailing label showing the date-in, a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the date-in on the Express Mail mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the Express Mail Post Office to Addressee service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the Express Mail mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original Express Mail mailing label, returned postcard receipt, and official notation entered by the USPS.

With regard to item (1) above, the petition was filed promptly after applicant became aware that the USPTO has no evidence of receipt of the correspondence in question.

With regard to item (2) above, the Express Mail mailing label number appears on the copy of the correspondence.

With regard to item (3) above, applicant has provided a copy of the originally deposited papers and a copy of the Express Mail label showing a "date-in" of 18 February 2006.

With regard to item (4) above, the petition includes a sufficient statement that the correspondence was deposited on the date of notation by the USPS and that the copies of the correspondence and Express Mail mailing label are true copies of the originally mailed correspondence.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(e) is GRANTED.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 07 August 2006 is hereby VACATED.

The application has an International Filing Date under 35 U.S.C. 363 of 04 December 2003, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 18 February 2006.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.



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